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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,776	04/28/2006	Laszlo Somogyi	289254US0PCT	9585

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EXAMINER	
HAMMER, KATIE L	

ART UNIT	PAPER NUMBER
1796	

NOTIFICATION DATE	DELIVERY MODE
05/28/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/577,776	SOMOGYI ET AL.	
	Examiner	Art Unit	
	KATIE HAMMER	1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 July 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12, 19-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12,19 and 20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *7/26/2006*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Claims 1-12 and 19-20 are pending in this application.

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Group I, claims 1-12 and 19-20 in the reply filed on March 20, 2009 is acknowledged. The traversal is on the ground(s) that the Office did not consider the contribution of each invention as a whole over the cited references in citing the lack of a special technical feature nor that the claims were interpreted in light of the specification. This is not found persuasive because the prior art also teaches dyes and processes for dyeing leather resulting in high fastnesses (see rejection below), and that since the dyes of formula F are known in the art, the technical feature of the invention no longer unifies the claims. The Applicant has not provided evidence of any unexpected result that leads the Examiner to believe that the current invention maintains a special technical feature.

The requirement is still deemed proper and is therefore made FINAL.

Claims 14-18 and 21-23 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on March 20, 2009.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 claims "one dye F" but does not teach what formula "F" refers to, thus rendering the claim indefinite. The examiner suggests that the limitations of dye formula F be moved from claim 8 into claim 1 for clarity.

Claim 9 recites the limitation "one dye F at a pH in the range from 3 to 6.5" in line 3 of the claim. There is insufficient antecedent basis for this limitation in the claim, as independent claim 1 requires a pH of 7.5 to 11.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-12 and 19-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 16-30 of copending Application No. 11/628,659. Although the conflicting claims are not identical, they are not patentably distinct from each other because App. No. 11/628,659 claims a similar process for dyeing leather comprising applying one anionic polyazo dye F with at least one alkaline-activable group of similar formula A (see claims 16, 21-22 of App. No. 11/628,659), the process where the dye F is at a pH from 3-6.5 and then at least 8 (see claim 26 of App. No. 11/628,659), dyeing by a one-stage process, before retanning, and at a temperature range of 10-60 degrees Celsius (see claims 27-29 of App. No. 11/628,659), per the requirements of instant claims 1-12 and 19-20 of the instant invention.

Although App. No. 11/628,659claims a similar method, the conflicting claims are not identical because App. No. 11/628,659 requires an anionic polyazo dye F with at least 3 diazo groups and group A where X is a C_1-C_4 alkyl or alkoxy and the instant claims require one dye F and group A where X is an electron-attracting radical, wherein the instant claims.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize such a process for dyeing leather by incorporating any type of dye. Such modification would be obvious because one having ordinary skill in the art would expect such a process to have similar properties to those claimed as the dye composition itself does not distinguish it from the process steps.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Objections

Claim 1 is objected to because of the following informalities: The word "activable" is not proper English. Appropriate correction is required.

Claim Rejections - 35 USC § 103

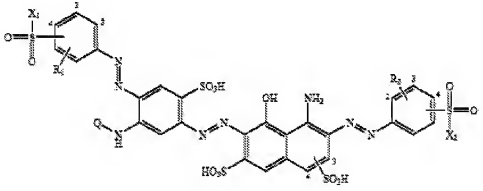
The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-12 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gisler (WO 03/031520) in view of Papa et al. (US 4,248,776).

Gisler (WO '520) teaches a process for dyeing leather with at least one dye F which has at least 3 diazo groups and at least one alkaline-activable group of the formula A which comprises treating the leather with an aqueous float comprising at least one dye F at a pH of 7.5 to 11, as claimed in claims 1-3 and 9, (compounds of formula I (shown below, where X is $-CH=CH_2$ and R_1 is $-SO_3H$, and there are two A radicals on the dye) and their salts are reactive dyes useful for dyeing or printing on substrates such as leather, see abstract and page 3, lines 5-13); where A is attached to the dye molecule via a -N=N- group, as claimed in claim 4 (see formula 1 below); that the dye F

is selected from dyes of the azo dyes, as claimed in claim 5, (see abstract); the process where n=0, as claimed in claim 6, (see formula 1 below); that the radical A is radical A2, as claimed in claim 7, (see formula 1 below); wherein the dye F is selected from the dyes of the general formulae (I) where Dk^1 is a formula of radical A2, the $Napth^1$ is substituted by –OH, $-NH_2$, and $–SO_3H$, the subscript p=1, Kk^1 is an aromatic radical derived from benzene substituted by $–SO_3H$ and pyrimidine, and the Dk^2 is also a radical of formula A2, and subscript m=1, as claimed in claims 8, (see formula 1 below); the dyeing is carried out at a one-stage process and at a temperature from 10-60 degrees Celsius, as claimed in claims 10 and 12, (see page 9, Use Prescription A and Use Prescription B).



Gisler (WO '520) differs from the instant claims by not explicitly teaching at least one dye F at a pH of 7.5 to 11.

However, Gisler (WO '520) teaches a general process for dyeing leather by the claimed dyes (see page 3, lines 5-13).

Papa et al. (US '776) in an analogous art of trisazo dyes for dyeing of leather, teaches a process for dyeing leather at a pH of about 9, then maintained at between 8

and 8.5 while pouring onto the leather substrate, as claimed in claim 1, (see col. 1, lines 22-25 and col. 2, line 66–col. 3, line 5); teaches a process wherein the dyeing is carried out before retanning, as claimed in claim 11, (see col. 2, line 66–col. 3, line 5).

Therefore, in view of the teaching of Papa et al., one having ordinary skill in the art at the time the invention was made would be motivated to modify the leather dyeing process taught by Gisler by incorporating the alkaline pH and retanning step as taught by Papa et al. to arrive at the claimed invention because Gisler et al. suggests the use of the formula for dyeing leather. Papa et al. as secondary reference clearly teaches the use of the claimed pH and dyeing before retanning, and, thus, a person of ordinary skill in the art would be motivated to combine these two process steps and pH requirements with a reasonable expectation of success for improving the affinity and penetration of the leather, and would expect such a process to have similar properties to those claimed, absent unexpected results.

Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gisler (WO 03/031520), in view of Papa et al. (US 4,248,776), further in view of Berenguer (US RE38,531 E).

The disclosure of Gisler (WO '520) and Papa et al. (US '776) as described above, does not explicitly teach or disclose the dyed leather obtained by the dyeing process and its use.

However, Gisler (WO '520) clearly teaches and suggests that leather is dyed by the process and composition of the invention (see page 3, lines 5-13).

Berenguer (US '531), in an analogous art of dyeing leather with a dye mixture including trisazo dyes, teaches dyed leather products used for furniture and footwear, as claimed in claims 19-20, (see abstract and col. 14, lines 36-64 and Application Examples A-E which teach the resulting dyed leather product).

Therefore, in view of the teaching of Berenguer, one having ordinary skill in the art at the time the invention was made would be motivated to use the leather dyeing process of Gisler and Papa et al. for the resulting dyed leather product taught by Berenguer to arrive at the claimed invention because Gisler and Papa et al. teach dyeing leather at the alkaline pH. Berenguer clearly teaches the dyed leather resulting from a trisazo dyeing process, and, thus, a person of ordinary skill in the art would be motivated to achieve the dyed leather product and use it for furniture or footwear, etc. as claimed with a reasonable expectation of success for increasing the fastness of the dyeing for those items and would expect such a product to have similar properties to those claimed, absent unexpected results.

Conclusion

The references listed on form PTO-1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KATIE HAMMER whose telephone number is (571)270-

7342. The examiner can normally be reached on Monday to Friday, 10:00am EST to 6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Harold Y Pyon/
Supervisory Patent Examiner, Art Unit 1796

/KLH/